

102311  
**No. 458**

Office - Supreme Court, U. S.  
**FILED**  
SEP 24 1940  
CHARLES CLAUDE PROPLEY  
CLERK

IN THE  
***Supreme Court of the United States***

OCTOBER TERM, A. D. 1940

**EMANUEL E. LARSON,**

Petitioner,

vs.

**PACIFIC MUTUAL LIFE INSURANCE  
COMPANY,**

Respondent.

} Petition for Cer-  
tiorari to the  
Supreme Court  
of Illinois.

**Petition for Writ of Certiorari**

**CHARLES M. HAFT,**

Attorney for Petitioner.



IN THE  
Supreme Court of the United States

OCTOBER TERM, A. D. 1940

---

---

EMANUEL E. LARSON,

Petitioner,

vs.

PACIFIC MUTUAL LIFE INSURANCE COM-  
PANY,

Respondent.

} Petition for Cer-  
tiorari to the  
Supreme Court  
of Illinois.

---

Petition for Writ of Certiorari

TO THE HONORABLE, THE JUSTICES OF SAID COURT:

Your petitioner presents this his petition to this court for a writ of certiorari to the Supreme Court of the State of Illinois, and in support thereof respectfully shows:

1. Your petitioner, with others, on August 11, 1935, filed a Complaint in the Superior Court of Cook County, Illinois, charging that a certain Rehabilitation and Re-insurance Agreement entered into between Samuel L. Carpenter, Jr., Insurance Commissioner of the State of California and Pacific Mutual Life Insurance Company, and approved by an Order of the Superior Court of Los Angeles County, California, was illegal and void, and prayed the Court to so determine and prayed in the alternative for a judgment for money damages to be satisfied out of a mortgage made by The Pacific Mutual Life Insurance Company of California upon property in Cook County, Illinois, which mortgage was in

the possession of Chicago Title and Trust Company, and further prayed for general relief (Rec. 1-8).

2. That in said Complaint it was alleged that The Pacific Mutual Life Insurance Company of California had in the State of Illinois in the hands of Chicago Title and Trust Company a real estate mortgage for \$250,000.00, and prayed for and obtained an injunction restraining the disposition of said mortgage.

3. Said Complaint prayed among other things that said mortgage be held as long as any liability exists upon petitioner's policy.

4. The Complaint also shows that petitioner is a resident of Illinois (Rec. 1).

5. That petitioner's cause of action is predicated upon a Non-Cancellable Disability Policy appearing in the Record at pages 8 to 16, issued to him on the 5th day of August, 1921, in the State of Minnesota, by The Pacific Mutual Life Insurance Company of California, upon his application made therefor in the State of Minnesota (Rec. 2). The terms of this policy do not subordinate the rights of petitioner under his policy in and to the assets of the Company to those of any other policy or policies (Rec. 8-16).

6. The Insurance Commissioner of California filed his petition in the Superior Court of Los Angeles County, California, naming The Pacific Mutual Life Insurance Company of California, sole respondent.

7. (Rec. 63-67) In his petition, the Commissioner alleged that the Company was insolvent within the meaning of the Insurance Act, and alleged that it was advisable that said Commissioner be appointed to work out a Rehabilitation and/or Reinsurance plan concerning the Corporation, and asking authority to forthwith take title and possession of all of respondent's books, property and assets, and that he be appointed conserva-

tor of said Corporation; that while the said petition and the petition subsequently filed, asking the approval of a plan presented, had the appearance of a proceeding to conserve the Company assets, and to protect all of its policy holders, in fact its real purpose, as developed and shown by the plan presented by the Commissioner, was to protect the life policies of said Company only, at the expense of the Non-Can Disability Policy Holders and to give the old company stockholders the right to acquire the new company stock. The Commissioner was appointed Conservator on the same day that he filed his petition (Rec. 61).

8. It appearing that the Judge who entered the Order last aforesaid was a policy holder in said Company, an Order was entered by another Judge on the 11th of August, 1936, reappointing the Commissioner Conservator, and on the 17th day of August, 1936, said Commissioner filed his Petition (Rec. 75) in the Superior Court of Los Angeles County, California, in which he alleged among other things (Rec. 76) that in 1918 said Insurance Company started issuing its so-called Non-Cancellable Income Disability Policies (hereinafter referred to as Non-Can Policies); that by reason of actuarial under calculation said Non-Can Policies were issued by the Old Company on an entirely inadequate premium rate and as later experience developed said premium so paid would be insufficient to pay the losses incurred thereon; that although in subsequent years said premium rates were increased, further experience disclosed that even at said increased rates said premiums were not sufficient to maintain the reserves necessary to mature the policy obligations.

9. The petition further alleged (Rec. 77) that in excess of sixty per cent (60%) of the insurance business written by said Company was conducted in states other than California; that said Commissioner caused to be

organized under the laws of California, a new Corporation known as Pacific Mutual Life Insurance Company and transferred thereto from the funds of the Old Company coming into his hands as Conservator the sum of \$3,000,000.00 in payment of all of its capital stock; that on the same date he transferred to said New Company all of the other assets formerly as of July 22, 1936, held by the Old Company or by himself as Conservator, except the stock in the New Company and rights or claims which the Old Company might have against any of the present or past officers, directors or employes; that since July 22, 1936, the Commissioner as Conservator acting through the New Company formed by him has carried on the Old Company business (Rec. 78); that in his opinion of the various offers of rehabilitation and reinsurance, the plan proposed by him is the best and by said plan proposed to rehabilitate the Old Company, through the medium of the New Company, by reinsuring in the New Company, without limit, all of the insurance business (other than Non-Can Policies) of the Old Company.

10. Within a few days after his appointment as Conservator, the Commissioner presented a Rehabilitation and Reinsurance Contract, along with his petition, asking the Court's approval thereof (Rec. 79) in which he alleged that no plan of rehabilitation or offer of reinsurance has been presented which affords to the policy holders of the Old Company the measure and opportunity of protection provided for in the Agreement presented by him.

11. That in fact no new capital was put into the New Company, but the sole method sought to be employed by the Commissioner for rehabilitation purposes was to destroy from ten to eighty per cent of the beneficial value of the Non-Can Policies by impairing the obligation of the contract embodied in said policies, as more

fully appears from the Rehabilitation and Reinsurance Agreement (Rec. 132); that while the property of your petitioner was taken for the benefit of the life policy holders, no compensation was paid to him on account of the reduction in the benefits due under his policy from \$500.00 per month to \$100.00 per month.

12. That the contract of Rehabilitation and Reinsurance obligated the New Company to reinsure all life policies to the extent of one hundred per cent (100%) of the benefits which the Old Company had obligated itself to pay, and that such full reinsurance extended also to a large number of life policies carrying disability features of the same nature as those of your petitioner without any reduction whatever in the amounts payable under the Reinsurance plan on the one hand or increase of premiums payable on the other (Rec. 124).

13. That a man of large financial means by the name of Giannini proposed to the California trial court to take over the Old Company business and assets and to start payment on Non-Can Policies at 50 per cent of the face amount of the benefits provided thereby to be paid and provide for restoring said benefits in accordance with a plan proposed and to put into said insurance business a large amount of new capital. Said plans would not have left in the hands of said conservator any stock in the company formed to take over the Old Company business assets and policy liability; that said plan would not have made it possible for the Old Company stockholders acting through the Old Company to have acquired the stock of the New Company as provided by the Rehabilitation and Reinsurance Agreement, but said Giannini plan would have been far more advantageous to Non-Can policyholders, than is the plan embodied in said Rehabilitation and Reinsurance Agreement; that to permit the Old Company stockholders to benefit at

the expense of the Non-Can policyholders is contrary to the public policy of the State of Illinois.

14. That your petitioner's policy is numbered 4619175 and falls within the first group shown at page 132 of the Record, and has the rights against company assets as any other policy (Rec. 8-18).

15. That by the terms of the Rehabilitation and Reinsurance Agreement policy holders who did not elect to accept the terms thereof were relegated to an alternative of filing claims with the Commissioner within seventy-five (75) days from the approval of the Rehabilitation and Reinsurance Contract, but such claims must be proved to the satisfaction of the Liquidator (Rec. 147).

16. By the Rehabilitation and Reinsurance Agreement, the New Company was obligated to pay all disability benefits under Non-Can Policies for disabilities commencing prior to the effective date of the Agreement (July 22, 1936), but it was under no obligation for benefits for disability commencing after said date.

17. The stockholders in the Old Company invested no capital in the New Company, but there is reserved to them, through the Old Company, the right to purchase from the Conservator all of the New Company stock (Rec. 144) without any limitation as to the time of purchase instead of requiring said stock to be sold for the benefit of Non-Can policyholders thereby rendering said agreement and proceedings unfair and inequitable contrary to the public policy of the State of Illinois. (*Case v. Los Angeles Lumber Products Co.*, 308 U. S. 106.)

18. The Record further shows (page 183) that out of a total of 211,806 life insurance policies in force on December 31, 1938, 116,000 of said policies carry as a feature thereof disability provisions similar in character



to the provisions of the policy of petitioner, but said 116,000 policies so carrying said disability provisions are not subject to any reduction in the payment of benefits, but under the Rehabilitation and Reinsurance Agreement (Rec. 132), to which no policyholder is a party, one of said life policies carrying a \$500.00 per month disability provision, would in case of his disability receive \$500.00 per month; petitioner whose policy calls for the payment of \$500.00 per month in case of disability would if disabled receive \$100.00 per month; another holder of a disability policy of like form but issued in 1932-1935, calling for a \$500.00 monthly payment in case of disability would receive \$450.00 per month; that the rights of petitioner are not, under the terms of his policy subordinated to the rights of any other policy (Rec. 8-18).

19. That petitioner was never served with process in the State of California and never entered his appearance in the proceedings in the Superior Court of Los Angeles County, California, and in no wise participated in said proceedings. That no person or persons were named defendants in the Insurance Commissioner's proceedings except The Pacific Mutual Life Insurance Company of California (Rec. 55).

20. That your petitioner's policy was numbered 4619175 and called for a monthly disability payment of \$500.00 (Rec. 8-11) and an annual premium payment of \$170.00 (Rec. 16), and falls in the first group shown at page 132 of the record.

21. The Pacific Mutual Life Insurance Company presented a motion to the Superior Court of Cook County asking that the injunction restraining the disposition of the \$250,000.00 mortgage be dissolved, and that the Complaint, as amended, be dismissed (Rec. 190).

22. The Court granted the motion to dissolve and ordered that as a matter of equity and by reason of the

pendency of this proceeding, upon payment of any unpaid premiums, the Pacific Mutual Life Insurance Company reinstate petitioner's policy pursuant to the terms and conditions of the Rehabilitation and Reinsurance Agreement (Rec. 194).

23. The Court also found that petitioner is bound by the terms and conditions of the Rehabilitation and Reinsurance Agreement which had been pleaded in bar and dismissed the Complaint (Rec. 193).

24. That petitioner's physical condition is such that he cannot obtain any new insurance in any insurance company (Rec. 253).

25. Petitioner shows unto the Court that the decision of the California Supreme Court here involved is reported in *Carpenter v. Pacific Mutual Life Insurance Co.*, 10 Cal. (2d) 307, and that on appeal to this Court said cause was heard in *Neblett v. Carpenter*, 305 U. S. 297.

26. Petitioner alleges that this Court has jurisdiction to grant the writ of certiorari herein prayed for pursuant to Section 8 of the Judicial Code (Session Laws, 1925, page 940) and shows unto the Court as reason therefor and assigns as error committed by the Illinois Supreme Court, and as grounds for the issuance of said writ, and the reversal of the judgment of the Supreme Court of Illinois, the following:

(a) The trial court and the Supreme Court in turn committed error in giving full faith and credit to the various California proceedings concerning rehabilitation and reinsurance in the mistaken belief that the Federal Constitution demanded such action without exception, whereas if said California proceedings were without jurisdiction or are in violation of the Federal Constitution or are contrary to the public policy of the State of Illinois, which in fact is the case, full faith and credit should not be given thereto, and shows unto the

Court that inasmuch as your petitioner, his insurance policy, and the \$250,000 mortgage were not in the State of California, but were within the State of Illinois, the California Court was without jurisdiction of the person of petitioner, his policy or said mortgage; that while the California authorities might deal with persons and property within the State of California, they could not deal with and modify the terms of the insurance policy of petitioner located in the State of Illinois; that the only power to take your petitioner's policy or destroy to the extent of eighty percent. (80%) the benefits payable thereunder, is the power of eminent domain, which cannot be exercised by a State as to property lying without the State, said proceedings are therefor without jurisdiction and not entitled to full faith and credit.

(b) That in sustaining the Order of the Superior Court of Los Angeles County, California in approving of the contract by the terms of which, your petitioner's benefit payments are to be decreased from \$500.00 a month to \$100.00 a month without any reduction whatsoever in the payment of premiums, the Supreme Court of California held that such reduction was made in the exercise of the State's police power, which is contrary to the public policy of Illinois, as manifested by Section 13 of Article 2 of the Constitution of Illinois, providing that private property shall not be taken for public use without just compensation, and Section 2 of Article 2 of said Constitution, which provides that no person shall be deprived of life, liberty or property without due process of law, and Section 14 of Article 2 of said Constitution prohibiting the impairment of the obligation of contracts; that the applicable provisions of the Federal Constitution and the decisions of the Supreme Court of the United States relative thereto are a part of the public policy of Illinois, and that the Fifth

Amendment to the Federal Constitution provides that no person shall be deprived of life, liberty or property without due process of law, nor shall private property be taken for public use without just compensation; that Section 1 of the Fourteenth Amendment to the Federal Constitution likewise provides that no person shall be deprived of property without due process of law, and also provides that no state shall deny to any person within its jurisdiction the equal protection of the laws; that section 10 of Article 1 of the Federal Constitution provides that no state shall pass any law impairing the obligation of contracts; that both the Supreme Court of the United States and the Supreme Court of Illinois, in giving effect respectively to the Federal and State Constitutions, have held that private property may not be taken or damaged in the exercise of the police power.

(c) That petitioner's contract of insurance is a Minnesota Contract into which is written the law of Minnesota, and not a California Contract, and any attempt of California to modify that contract by her law is lacking in due process of law contrary to Section 2 of Article 2 of the Illinois Constitution, and the Fifth Amendment, and Section 1 of the Fourteenth Amendment to the Federal Constitution, and impairs said Minnesota Contract in violation of Section 10 of Article I of the Federal Constitution all of which constitute a part of the public policy of the State of Illinois.

(d) That it appears that the only authority claimed as the basis for the action of the Commissioner of Insurance of California, is Paragraph 1043 of Chapter 145 of the California Sessions Laws of 1935, which grants authority to the Commissioner, subject to the approval of the Court, "and subject to the liens as may be necessary to mutualize or reinsure the business of such person or enter into rehabilitation agreements." This language does not authorize the Commissioner

to single out a class of policies issued by a particular company and decrease the benefits payable under an insurance policy by the terms thereof, and thereby impair the obligation of such contract which leaves the rehabilitation and reinsurance agreement without due process of law, contrary to the provisions of the Illinois and Federal Constitutions hereinbefore referred to, and consequently contrary to the public policy of the State of Illinois. If on the other hand, the language of said statute is to be construed as authorizing the impairment of the obligation of insurance contracts, then said statute is in violation of both the Illinois and Federal constitutional provisions pertaining to the impairment of contracts hereinbefore referred to, and is for that reason contrary to the public policy of the State of Illinois.

(e) If the statute in question is to be construed as giving the Commissioner of Insurance the right to do whatever he may please with reference to rehabilitation and reinsurance contracts, including the impairment of contracts of insurance, if he sees fit, the legislature is then surrendering to the Commissioner its legislative functions contrary to Article III., of the Constitution of Illinois, and therefore contrary to the Illinois public policy.

(f) If we take Paragraph 1043 of the California Insurance Code as authorizing the impairment of plaintiff's insurance contract to the extent of eighty percent. (80%), resulting in the impairment thereof, then said statute is contrary to Section 14 of Article 2 of the Illinois Constitution, and contrary also to Section 10 of Article 1 of the Federal Constitution, hence contrary to the public policy of the State of Illinois.

(g) The Rehabilitation and Reinsurance Agreement does not benefit the public of California generally, and inasmuch as sixty percent. (60%) of the business of

the Company is done outside of California, it is to the benefit, to that extent, of persons who are not citizens of California. Said contract benefits only certain classes of the policy holders in a single Company doing business in California, and is, therefore, for private benefit and not for public benefit, and hence not in the exercise of the police power. And inasmuch as the Supreme Court of California bases its opinion solely on the proposition that it is an exercise of the police power, and that proposition not being tenable, petitioner's property is taken and damaged without due process of law, contrary to the provisions of both the Federal Constitution and the Constitution of the State of Illinois hereinbefore referred to, and consequently contrary to the public policy of the State of Illinois.

(h) The contract in question, as approved by the Court, leaves wholly undisturbed the life policy benefits, although in a large number of instances the life policies carry the same disability benefits covered by petitioner's policy, and destroys the benefits of certain classes of disability policies in varying degrees less than that to which petitioner's policy is subjected. In some instances, the impairment amounted to only ten percent. (10%). Said California proceedings fail to afford to petitioner the equal protection of the law, contrary to Section 1 of the Fourteenth Amendment to the Federal Constitution, which is a part of the public policy of the State of Illinois.

(i) Paragraph 1043 of the Insurance Code of California of 1935 is in violation of the Fifth Amendment to the Federal Constitution and void.

Paragraph 1043 of the Insurance Code of California of 1935 is in violation of Section 1 of the Fourteenth Amendment to the Federal Constitution and void.

Paragraph 1043 of the Insurance Code of California of 1935 is in violation of Section 10 of Article 1 of the

Federal Constitution and void, thereby rendering all of said contract provisions absolutely void.

Inasmuch as said California proceedings are based solely on the last aforesaid section and said section is void said proceedings are likewise void and without jurisdiction, or due process and are not entitled to recognition in the State of Illinois.

(j) Considered as a proceeding *in rem* to take in part from petitioner his policy contract, the California Courts and authorities had no jurisdiction over the *res*, because its situs and actual location was that of its possessor in Illinois, and all of said proceedings are therefore without due process of law in violation of Section 1 of the Fourteenth Amendment to the Federal Constitution and the Fifth Amendment to the Federal Constitution, and section 2 of Article II of the Illinois Constitution and are not therefor entitled to full faith and credit in Illinois.

(k) The California proceedings, to which the Illinois Courts were called upon to accord full faith and credit, take private property without just compensation, in violation of the Fifth Amendment to the Federal Constitution, and impair the obligation of petitioner's insurance contract in violation of Section 10 of Article 1 of the Federal Constitution, and deprive petitioner of his property without due process of law, contrary to Section 1 of the Fourteenth Amendment to the Federal Constitution, and deny to petitioner the equal protection of the laws contrary to said Section 1 of the Fourteenth Amendment to the Federal Constitution, and for each and all of said reasons said California proceedings are void and not entitled to full faith and credit in the State of Illinois.

(l) It is not contended that petitioner was named as a party to the California proceedings or that he was



personally served therein or that he ever entered his appearance therein, although the effect of the California proceedings were *in personam* in that they affect his personal rights as a holder of the policy in question but not his possession thereof, and are therefore without due process of law in violation of the Fifth Amendment and Section 1 of the Fourteenth Amendment to the Federal Constitution.

(m) It is not contended that petitioner was named as a party to the California proceedings or that he was personally served therein or that he ever entered his appearance therein, although the effect of the California proceedings were *in personam* in that they affect his personal rights as a holder of the policy in question, contrary to the Fifth Amendment and Section 1 of the Fourteenth Amendment to the Federal Constitution, and Section 2 of Article 2 of the Constitution of Illinois, all of which are part of the public policy of Illinois, thereby rendering said California proceedings contrary to such public policy and not entitled to full faith and credit in Illinois.

(n) Insofar as the Illinois Insurance Act of 1937 can be said to be retroactive and to deprive petitioner of the right to establish a preferred claim against the Illinois assets of The Pacific Mutual Life Insurance Company of California, said Act destroys vested rights and impairs the obligation of petitioner's insurance policy in violation of Section 10 of Article 1, and Section 1 of the Fourteenth Amendment to the Federal Constitution, and is therefore void.

(o) The judgment of the Supreme Court of Illinois, in holding that the 1937 Insurance Code, destroying petitioner's remedy against the Old Company and its Conservator, and reversing the judgment of the trial court, thereby denying the relief granted by the trial



court without remanding the case for a hearing on the merits upon petitioner's claim for damages for a breach of his insurance contract, was construing said Insurance Code in a manner that renders it clearly in violation of Section 10 of Article 1 of the Constitution, and the Fifth Amendment and Section 1 of the Fourteenth Amendment to the Federal Constitution; that petitioner's remedy is a part of the obligation of his insurance contract; that both the Old Company and its Conservator are parties to the suit in the Superior Court of Cook County (Rec. 1-21) and are within the jurisdiction of said Court, and subject to any judgment that might have been or may be entered against them or either of them in said Court; that if the judgment of the Superior Court of Cook County, Illinois, is not reversed, and petitioner sues the Old Company and its Conservator, or either of them in the State of California, which is the only place where he can get service upon them, he will, in all probability, be met with the contention that his only remedy in that State was to file his claim with the Conservator within seventy-five days of the Order approving the Rehabilitation and Reinsurance Agreement, which time has long since elapsed, and consequently petitioner is without remedy in the State of California which, as aforesaid, is the only State in which he can obtain service upon either the said Old Company or said Conservator, or liquidator hence the said Insurance Act, construed as it is by the Supreme Court of Illinois, impairs the obligation of petitioner's contract and destroys his contract rights and all remedy thereon, all of which is contrary to the public policy of Illinois.

26. Petitioner respectfully shows unto the Court that it is only by the issuance by this Court of its writ of certiorari to the Supreme Court of Illinois, and a decision of the questions here presented upon their merits, that petitioner's rights accorded by the Constitution of the United States can be preserved.

Wherefore your petitioner prays that this Court cause to be issued its writ of certiorari directed to the Supreme Court of Illinois, commanding it to transmit to this Court a transcript of its proceedings, to the end that this Court may review the same and may, upon such hearing, reverse and remand the judgment of said Court with directions as this Court may adjudge.

EMANUEL E. LARSON,  
*Petitioner,*

By CHARLES M. HAFT,  
*His Attorney.*

(Petitioner is filing an appendix hereto setting forth comments on the contract in question in order to devote his brief in support solely to questions of law.)

